

## § 204.75

### § 204.75 Collection services.

Section 13 of the Debt Collection Act (31 U.S.C. 3718) authorizes agencies to enter into contracts for collection services to recover debts owed the United States. The Act requires that certain provisions be contained in such contracts, including:

(a) The agency retains the authority to resolve a dispute, including the authority to terminate a collection action or refer the matter to the Attorney General for civil remedies; and

(b) The contractor is subject to the Privacy Act of 1974, as it applies to private contractors, as well as subject to State and Federal laws governing debt collection practices.

### § 204.76 Use of credit bureau or consumer reporting agencies.

(a) The Commission may report delinquent debts to consumer reporting agencies (See 31 U.S.C. 3701(a)(3), 3711). Sixty days prior to release of information to a consumer reporting agency, the debtor shall be notified, in writing, of the intent to disclose the existence of the debt to a consumer reporting agency. Such notice of intent may be a separate correspondence or included in correspondence demanding direct payment. The notice shall be in conformance with 31 U.S.C. 3711(e) and the Federal Claims Collection Standards. The Commission shall provide, in this notice, the debtor with:

(1) An opportunity to inspect and copy agency records pertaining to the debt;

(2) An opportunity for an administrative review of the legal enforceability or past due status of the debt;

(3) An opportunity to enter into a repayment agreement on terms satisfactory to the Commission to prevent the Commission from reporting the debt as overdue to consumer reporting agencies, and provide deadlines and method for requesting this relief;

(4) An explanation of the rate of interest that will accrue on the debt, that all costs incurred to collect the debt will be charged to the debtor, the authority for assessing these costs, and the manner in which the Commission will calculate the amount of these cost;

(5) An explanation that the Commission will report the debt to the con-

## 17 CFR Ch. II (4-1-02 Edition)

sumer reporting agencies to the detriment of the debtor's credit rating; and

(6) A description of the collection actions that the agency may take in the future if those presently proposed actions do not result in repayment of the loan obligation, including the filing of a lawsuit against the borrower by the agency and assignment of the debt for collection by offset against Federal income tax refunds or the filing of a lawsuit against the debtor by the Federal Government.

(b) The information that may be disclosed to the consumer reporting agency is limited to:

(1) The debtor's name, address, social security number or taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the claim; and

(3) The Commission program or activity under which the claim arose.

[58 FR 64373, Dec. 7, 1993, as amended at 66 FR 54135, Oct. 26, 2001]

### § 204.77 Referrals to collection agencies.

(a) The Commission has authority to contract for collection services to recover delinquent debts in accordance with 31 U.S.C. 3718(a) and the Federal Claims Collection Standards (31 CFR 901.5).

(b) The Commission will use private collection agencies where it determines that their use is in the best interest of the Government. Where the Commission determines that there is a need to contract for collection services, the contract will provide that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, or refer the matter to the Department of Justice for litigation or to take any other action under this part will be retained by the Commission;

(2) Contractors are subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m) and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor is required to strictly account for all amounts collected;

(4) The contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable Commission to determine whether to pursue collection through litigation or to terminate collection; and

(5) The contractor must agree to provide any data in its files requested by the Commission upon returning the account to the Commission for subsequent referral to the Department of Justice for litigation.

[58 FR 64373, Dec. 7, 1993, as amended at 66 FR 54135, Oct. 26, 2001]

## **PART 209—FORMS PRESCRIBED UNDER THE COMMISSION'S RULES OF PRACTICE**

Sec.

209.0-1 Availability of forms.

209.1 Form D-A: Disclosure of assets and financial information.

**AUTHORITY:** 15 U.S.C. 77h-1, 77u, 78u-2, 78u-3, 78v, 78w, 80a-9, 80a-37, 80a-38, 80a39, 80a-40, 80a-41, 80a-44, 80b-3, 80b-9, 80b-11, and 80b-12, unless otherwise noted.

**SOURCE:** 60 FR 32823, June 23, 1995, unless otherwise noted.

### **§ 209.0-1 Availability of forms.**

(a) This part identifies and describes the forms for use under the Securities and Exchange Commission's Rules of Practice, part 201 of this chapter.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Any person may inspect the forms at this address and at the Commission's regional and district offices. (See § 200.11 of this chapter for the addresses of the SEC regional and district offices.)

### **§ 209.1 Form D-A: Disclosure of assets and financial information.**

(a) Rules 410 and 630 of the Rules of Practice (17 CFR 201.410 and 201.630) provide that under certain circumstances a respondent who asserts

or intends to assert an inability to pay disgorgement, interest or penalties may be required to disclose certain financial information. Unless otherwise ordered, this form may be used by individuals required to supply such information.

(b) The respondent filing Form D-A is required promptly to notify the Commission of any material change in the answer to any question on this form.

(c) Form D-A may not be withheld from the interested division. A respondent making financial information disclosures on this form after the institution of proceedings may make a motion, pursuant to Rule 322 of the Commission's Rules of Practice (17 CFR 201.322), for the issuance of a protective order to limit disclosure to the public or parties other than the interested division of the information submitted on Form D-A. A request for a protective order allows the requester an opportunity to justify the need for confidentiality. The making of a motion for a protective order, however, does not guarantee that disclosure will be limited.

(d) No party receiving information for which a motion for a protective order has been made may transfer or convey the information to any other person prior to a ruling on the motion without the prior permission of the Commission or a hearing officer.

(e) A person making financial information disclosures on Form D-A prior to the institution of proceedings, in connection with an offer of settlement or otherwise, may request confidential treatment of the information pursuant to the Freedom of Information Act. See the Commission's Freedom of Information Act ("FOIA") regulations, 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to substantiate the need for confidentiality. No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under FOIA is received.